

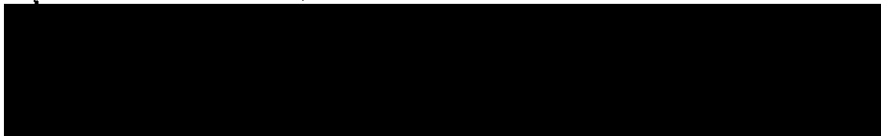


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 99 050 52332 Office: Vermont Service Center Date:

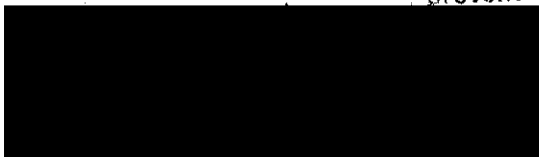
IN RE: Petitioner:  
Beneficiary:



AUG 22 2000

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



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prevent clearly unwarranted  
invasion of personal privacy

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrence M. O'Reilly, Director  
Administrative Appeals Office

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research fellow at Thomas Jefferson University, where she was a research fellow at the time she filed the petition. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In a letter accompanying the initial filing, counsel states that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however. The petitioner holds a Ph.D. in Medicine from McGill University in Montreal, Canada. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. An additional finding of exceptional ability would be of no benefit to the petitioner in this proceeding. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner is a researcher on a project conducting critical research in the field of bone marrow transplants in which she has developed an approach to using CD4 analogs to facilitate bone marrow transplants, and because of her research in understanding amifostines which makes massive doses of radiation and chemotherapy possible in combating cancer. It cannot be disputed that research

into improvement in the field of bone marrow transplants meets the first "substantial intrinsic merit" test. Similarly, if the petitioner's research yields significant information regarding the effects of bone marrow transplants, such knowledge can have national implications simply because of the universal nature of scientific findings. The petitioner must now establish that she personally will benefit the U.S. to a greater degree than would a U.S. worker fully qualified for the position sought. General arguments regarding the importance of bone marrow transplants cannot satisfy these criteria.

The petitioner submits testimonials from several colleagues in the cancer research field: [REDACTED]

[REDACTED] is presently employed as a post-doctoral fellow in the Bone Marrow Transplant Unit, Department of Medicine at Thomas Jefferson University. Due to the fact that she has played an integral role in the success of research efforts investigating gene therapy and immunotherapy of genetic diseases and leukemia, I feel that her acquisition of permanent resident status would be in the national interest and vital to the continued success of these highly important projects.

[REDACTED] credentials are what one might expect of someone with her considerable talents and experience. She received her Bachelor's (equivalent to an M.D.) and M.Sc. degrees from the China Medical University in 1984 and 1987, respectively. Following this, she obtained her Ph.D. degree from the Medical School of McGill University in 1997. She has demonstrated for the first time that the de novo artificial bone marrow induced by a recombinant human bone morphogenetic protein-2 (rhBMP-2), expresses the full range of hemopoietic activity including hemopoietic stem cells. She has also developed the first rat Y-chromosome specific DNA probe which is a crucial tool used to study the biology of hemopoietic stem cells after bone marrow transplant. Bone marrow transplant is now being widely used therapeutically for leukemia and other types of cancer after receiving high doses of irradiation or chemotherapeutic drugs. In addition, she has investigated how the local environmental factors of bone marrow and spleen influence the differential pattern of progression of rat myeloid leukemia (BNML). She has demonstrated that spleen cell conditioned medium contains a leukemic inhibitory activity, and cell surface molecule ST3 expressed by the marrow stromal fibroblastoid cells is functioning as a cellular adhesion molecule for hemopoietic precursor/progenitor and leukemic cells. All of these studies provide very important information to further study the biology of hemopoietic stem cells as well as leukemic cells, to design

new strategies for the treatment of leukemia or other solid tumors.

The work currently performed by [REDACTED] will be of tremendous importance to the field of bone marrow transplantation, gene therapy and immunotherapy of hemopoietic disease as well as leukemia or other tumors. Most people believe that gene and immunotherapy of tumor will have a huge impact on the practice of medicine. [REDACTED] carrying out studies designed to do gene therapy using a newly developed DNA/RNA chimeric molecules, immunotherapy of leukemia using donor T lymphocytes (graft versus leukemia), and treatment of graft versus host disease after bone marrow transplant using a newly developed synthetic peptide (CD4 peptide). These studies have an extremely important social and economic impact on this nation.

[REDACTED] concludes that "it is clear from the above discussion that Dr. An is an integral part of the gene therapy, immunotherapy and CD4 peptide project studies, that her talents are of great value in research directed toward improving our nation's health."

[REDACTED]

... Since my laboratory has a long standing interest in the therapeutic development for diseases such as cancer, I came to know the fascinating research work of [REDACTED] at Thomas Jefferson University through scientific publications and research seminars. The work of [REDACTED] is truly outstanding in the field.

[REDACTED] has made important contribution to new drug development which will bring benefit to many patients in this country. For example, [REDACTED] and her fellow scientists at Thomas Jefferson University in Philadelphia are developing new medicines for the treatment of a large number of immunological diseases which include multiple sclerosis, rheumatoid arthritis, psoriasis, insulin-dependent diabetes, many types of organ transplant rejection and graft-versus-host disease which occurs in cancer patients after bone marrow transplantation procedures. All together these diseases are affecting more than 10 million Americans. . . .

In conclusion, [REDACTED] an extraordinary scientist who has been recognized by many researchers in this country. Her research is essential for helping to maintain the leadership of our country in science and technology. . . .

[REDACTED]

[REDACTED] is working in the Bone Marrow Transplantation Unit which is associated with Kimmel Cancer Center. Kimmel Cancer Center is a major national resource in cancer research, not only in the greater Philadelphia region, but internationally. It is designated Cancer Center by the National Cancer Institute in Bethesda, Maryland which recognizes Kimmel Cancer Center as an important force in translational research in this country that will lead to the development of new clinical care for cancer patients. It is ranked among the nation's top 15 cancer centers in terms of federal research funding from the National Cancer Institute.

As the Director of Kimmel Cancer Center, I would like to point out the contribution of [REDACTED] the Cancer Center, particularly to our major efforts in the translational research program. Among many achievements, a specific example is her research with fellow scientists at the Center to utilize advanced techniques in computer, chemistry, biology, and medicine to design CD4-based peptide and organic drugs for the treatment of immunological diseases. In comparison with the currently available treatment such as an anti-CD4 monoclonal antibody which has unfavorable side effects, this new class of CD4 drugs offer many potential advantages: they can be used for long period of time without causing serious side effects; they are more specific and therefore less toxic than other drugs; and they can be mass-produced using inexpensive materials, thus significantly lowering the cost of the treatment. As such, these immune system drugs are of great potential for clinical application. These elegant studies have demonstrated the power and importance of translational research in which new discoveries in computer, chemistry, and biology lead to better therapeutic treatment for patients. The implication of [REDACTED] research for other human diseases such as cancer and AIDS is profound.

[REDACTED] work has been recognized by other scientists at leading institutions in this country, such as Cornell University, University of Pennsylvania, University of Massachusetts, Albert Einstein College of Medicine, and Memorial Sloan Kettering Cancer Center. Her research has fascinated internationally renowned experts in the field.

[REDACTED]

[REDACTED] addition, [REDACTED] research has attracted the attention of companies and academic research laboratories from countries all

over the world, including Japan, England, France, Germany, Spain, Belgium, Italy, Finland, Poland, Russia, and Netherlands.

In conclusion, [REDACTED] a truly outstanding scientist recognized nationally and internationally, and she has made important contribution to United States leadership to biomedical research.

[REDACTED]

. . . Since [REDACTED] has been collaborating closely with my laboratory in the development of new medicines for human clinical studies, I know very well the work of [REDACTED] and its importance for our University's mission in translating basic research discoveries into new clinical treatments.

[REDACTED] been working on several research areas. One particular area which I am familiar with is the new drug development for clinical trials by [REDACTED] fellow scientists and clinicians at Jefferson. For example, they use modern computer-based technology to screen and discover new drugs for the treatment of cancer, multiple sclerosis, and other human immune diseases. Traditionally, pharmaceutical companies rely on a typical process called "massive random screening" in which a huge number of molecules (~100,000-500,000) need to be tested in order to find new drugs. Obviously this is a time-consuming and expensive research and development process. As such, it generally takes more than 10 years and costs over \$100 million to develop a drug. Facing today's rapid changes in the health care environment, our society and patients can no longer afford such lengthy and expensive ways of drug development. The new computer screening technology developed by Dr. An and coworkers here may represent a solution to these problems. As demonstrated in their recent studies, this new technology can speed the traditional random screening process by several orders of magnitude, save millions of dollars in research and development, and most importantly bring benefits of the new treatment to patients much sooner. For these reasons, this technology may have a tremendous impact on new drug research and the health care industry in this country and all over the world. In fact, I am very pleased to note that the novel CD4-based therapeutics which Dr. An is currently working on have attracted the interest from a large number of companies in the United States, including both international pharmaceutical giants such [REDACTED]

[REDACTED] and smaller biotechnology companies such as [REDACTED]

[REDACTED]

On April 20, 1999, the director requested additional evidence to show that the petitioner's achievements will prospectively benefit the United States to a substantially greater degree than a U.S. worker with the same minimum qualifications. In response, counsel for the petitioner provides additional letters from [REDACTED] and [REDACTED]. Counsel also provides a letter from [REDACTED].

[REDACTED]

[REDACTED]

While I will respond in detail to each of the points raised, in summary I wish to assure you that [REDACTED] uniquely qualified as a researcher in her field of gene therapy and immunotherapy of genetic diseases and leukemia. She has been responsible for scientific advances to date that are of major significance. If [REDACTED] were denied permanent residence and thus unavailable in the future to our research efforts, I can assure you that our Bone Marrow Transplant Research Unit would suffer a severe setback with national ramifications.

[REDACTED] is currently working on research projects within the Bone Marrow Transplant Research Unit which are at the cutting edge of national efforts to combat leukemia. Within my laboratory she is performing a leading role in efforts at target gene repair for gene therapy as a method of undoing the damage caused by certain genetic diseases. She is instrumental in developing methods of using human CD4 analogs and inhibitors to combat graft versus host disease, a leading problem limiting the therapeutic use of bone marrow transplantation. Finally she is one of our leading researchers in gaining an understanding of amifostine, and how this drug protects normal cells, thus permitting larger doses of radiation and chemotherapy to be used against tumor cells.

. . . We have been awarded a large grant from the National Institute of Health to pursue the work on CD4 analogs, which includes a multi-center national trial. [REDACTED] were forced to leave Jefferson now, given the critical importance of this research, the loss to my laboratory and to bone marrow research in general would certainly be national in scope. It is doubtful that the grant and treatment trial noted above could be successfully completed.

In the Notice of Action, the point is made that [REDACTED] submitted a research paper "Recombinant human bone morphogenetic protein-2," but is only one of five researchers who worked on this project. Quite to the contrary, if you



review [redacted] resume you will get a sense of her remarkable creativity as a researcher. For each of her published papers and submitted papers (including the paper you refer to) [redacted] the first author, which means that [redacted] directly performed and was the central figure in the research which lead to the journal article. If you compare this with other researchers you may consider for national interest waiver, you will find that it is highly unusual and a tribute to [redacted] creative talents, for a researcher to consistently be in the lead role in her journal articles.

[redacted] came to us with six years of bone marrow research and now has completed three additional years during which she has become one of the leading researchers in my laboratory. Even if I hired a qualified cancer researcher it would take an absolute minimum of two years working in our laboratory and learning our research foci before this new researcher could perform at anything near the level which Dr. Jing An has reached. Quite frankly, a loss of two years in [redacted] position would do irreparable harm to our research efforts, our current grants, and our national bone marrow transplant trial. Given the central role that Thomas Jefferson performs in the national anti-leukemia research efforts, this would be a significant set-back to national scientific efforts.

[redacted]  
[redacted] has become a key researcher at our Institute with respect to two critical areas of research. First, she has played a leading role in developing an approach to using CD4 analogs to facilitate bone marrow transplants that has the potential to benefit countless cancer sufferers. Second, she has substantially increased the understanding of amifostines and their protection of normal cells which makes massive doses of radiation and chemotherapy possible.

[redacted]  
[redacted] In her critical areas of specialization described above, [redacted] ranks among the most knowledgeable scientists in the United States, and to replace her now would be a severe blow to our research efforts.

[redacted]  
I am familiar with [redacted] research because I have for some time been impressed with the research efforts of the Bone Marrow Transplant Research Unit at Thomas Jefferson University, and I have recently come to understand the importance of [redacted] role within that research effort. Certainly, national research efforts to find effective treatment for leukemia are among the highest national health priorities. While research on bone marrow transplant is being carried out

at a number of research facilities throughout the United States, the research at Thomas Jefferson University offers some of the most encouraging developments to improve the outcome of bone marrow transplantation.

██████████ research efforts form a central part of these developments. Her research efforts in targeted gene repair, use of amifostine to protect patients from the side effects of chemotherapy and radiotherapy, and use of CD4 analogs to prevent Graft Versus Host Disease, have yielded extremely promising results which could play a highly significant role within the next five years in dramatically improving leukemia treatment. With her highly concentrated experience in this and related fields over the past twelve years, I believe it is of national importance to see that ██████████ is permitted to maintain this research effort within the United States.

The director denied the petition, stating that the Service is not persuaded "that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the beneficiary by making the job available to United States workers."

On appeal, counsel states:

... To summarize the facts in this case, ██████████ holds a

██████████ She has fifteen years of cancer research experience following completion of her medical degree. Prior to coming to her present position at Thomas Jefferson Medical College, she had six years of bone marrow research experience and she has now completed three additional years at Thomas Jefferson. She has five publications (either published or accepted for publication), 4 abstracts, and five publications in preparation, and in each publication, ██████████ is listed as the first author.

In presenting her case for national interest waiver, ██████████ relied on letters from five scientists. Three of the scientists are distinguished researchers at Thomas Jefferson Medical University, and two are researchers from other institutions who had learned of ██████████ research through her publications and accomplishments. . . . These researchers contend in their letters that ██████████ should be entitled to a national interest waiver because of her critical research in the field of bone marrow transplants in which she has developed an approach to using CD4 analogs to facilitate bone marrow transplants, and because of her research in understanding amifostines which makes massive doses of radiation and chemotherapy possible in combating cancer.

While the petitioner has been credited with original discoveries in the field, the petitioner's research-based field demands that new and useful information be produced in order to justify usually grant-based funding. The record does not persuasively establish that the petitioner's discoveries substantially exceed in importance those of others working in the field.

This office does not dispute the importance of bone marrow transplants, nor does it contest the competence or qualifications of the petitioner. Nevertheless, the petitioner in this case has not demonstrated that the labor certification process cannot adequately serve the interests of her prospective employer and the United States. While the petitioner's research is valuable and respected, this office does not conclude that the petitioner qualifies for a waiver of the job offer/labor certification provisions which normally attach to the visa classification sought.

In order to qualify for a waiver of the job offer requirement in the national interest, the petitioner must present a benefit to the United States which, although not at the level of sustained national acclaim, nevertheless exceeds the benefit which one could expect from any qualified member of the alien's profession or field.

The petitioner need not place herself at the very top of her field, of course, but she should significantly exceed the average or median level of impact. Otherwise, it is not clear how the petitioner would serve the national interest to a degree that would justify denying job opportunities to qualified U.S. workers in favor of the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not met that burden. Accordingly, the decision of the director denying the petition will not be disturbed.

**ORDER:** The appeal is dismissed.